

Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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BTA nonacquiescences

The Board of Tax Appeals (the BTA), a separate agency from the Department of Revenue, decides both formal and informal administrative appeals from determinations made by the Department of Revenue. BTA decisions bind the Department only for the individual taxpayer's case and for the time period under appeal. BTA decisions in informal cases, by law, cannot be appealed by the Department.

All BTA decisions are available to the public. The Department does not always agree with adverse BTA decisions. In some cases the Department needs to inform the public, tax practitioners, and the Department's employees, whether it agrees or disagrees with the adverse BTA decision. The Department has decided to issue these statements to avoid misunderstandings about how the Department will apply these BTA decisions to other taxpayers' situations.

Any statement issued about a BTA decision may be withdrawn or modified at any time. The lack of a statement issued by the Department about any BTA decision has no meaning. It neither implies agreement or disagreement with a BTA decision.

This ETA expresses the Department's nonacquiescence with three recent BTA decisions.

1. Lincoln Ballinger

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Lincoln Ballinger Limited Partnership v. Department of Revenue*, Docket No. 51253 (October 7, 1998). *Lincoln Ballinger* involved the sale of an apartment complex. The Department will not follow the Board's holding that "the in-unit ranges, refrigerators, washers, and dryers should be considered as real property for purposes of the application of the sales tax in this case."

Advisories numbered as 2 plus three digits (e.g. 2002.16.179) are advisories issued on or after July 2, 1998.

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2. Cimlinc

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Cimlinc, Inc. v. Department of Revenue*, Docket No. 54862 (June 13, 2000). *Cimlinc, Inc.* involved a taxpayer performing research and development services under contract. The Department will not follow the Board's holding that a taxpayer may claim the business and occupation tax credit for qualifying research and development performed by its sub-contractor, without an assignment of the credit from the sub-contractor to the taxpayer.

3. Puget Sound Industries

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Puget Sound Industries, Inc. v. Department of Revenue*, Docket No. 54675 (August 16, 2000). *Puget Sound Industries* involved a taxpayer who transmits live programming under contract to a radio station. The Department will not follow the Board's holding that a taxpayer transmitting live programming under contract to a radio station, is also considered a broadcaster for business and occupation tax purposes when the frequency transmitted on is available to only a few listeners with specialized receivers.